UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

GULF CARIBE MARITIME, INC. [1]/

Employer

and Case No. 31-RC-7722

INLANDBOATMEN'S UNION OF THE PACIFIC, MARINE DIVISION, AFL-CIO, affiliated with the INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, AFL-CIO [2]/

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. [3]/

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. [4]/

3. The labor organizations involved claim to represent certain employees of the Employer. [5]/

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act. [6]/

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: [7]/

INCLUDED: Boat operators and deckhands employed in the Employer's Southern California operations.

EXCLUDED: Office clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION [8]/

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining purposes by **Inlandboatmen's Union of the Pacific, Marine Division, AFL-CIO, affiliated with the International Longshore and Warehouse Union, AFL-CIO,** by **Seafarers International Union, Atlantic, Gulf, Lakes and Inland Water District, affiliated with the Seafarers International Union of North America, AFL-CIO**, or by **Neither**.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list, containing the **FULL** names and addresses of all the eligible voters shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the office of Region 31, 7th Floor, 11150 West Olympic Boulevard, Los Angeles, California 90064-1824, on or before **February 3, 2000**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by February 10, 2000.

DATED at Los Angeles, California this 27th day of January, 2000.

/s/ Byron B. Kohn
Byron B. Kohn, Acting Regional Director
National Labor Relations Board
Region 31

FOOTNOTES

1/ The name of the Employer appears as corrected at the hearing.

2/ The name of the Petitioner appears as corrected at the hearing.

3/ At the hearing in this matter, the Employer and the Intervenor made the following five motions:

(a) Motion to Dismiss the Petition on the basis that there is no question concerning representation because there is a contract bar;

(b) Motion to Vacate the Notice of Hearing on the basis that it is improper under the Board's existing case law to proceed with a representation case at this time because Section 8(a)(2) charges are still pending before the Board;

(c) Motion that Petition be held in abeyance pending the Board decision on the unfair labor practice charges on the basis that it is premature for the Regional Director to proceed with a hearing in this matter when the outstanding unfair labor practices are unresolved. The Employer and the Intervenor further contend that a *Carlson Furniture*, 157 NLRB 851(1966), waiver is only effective after a Board order has issued and that the Regional Director is not authorized to obtain clearance from the Board to proceed with a *Carlson Furniture* waiver unless there is a Board order;

(d) Motion that the Petitioner's Request to Proceed and *Carlson Furniture* waiver be denied as premature; and

(e) Motion that the Regional Director transfer the instant proceeding to the Board for decision as the Regional Director does not have the authority to honor a *Carlson Furniture* waiver until there is a Board decision and the Regional Director is departing from existing case law and is

trying to make new law which should only be made by the Board.

The Hearing Officer referred all five of these motions to me for decision. As the Regional Director, pursuant to the Board's Casehandling Manual and its procedures, I have the authority and discretion to go forward in processing representation cases to the point of issuing a decision. I have considered the motions and, for the following reasons, I have determined that all the motions should be, and hereby are, denied.

With reference to the Motion to Dismiss the Petition, paragraph (a) above, I hereby take official notice of the related C-case proceeding in this matter involving cases 31-CA-23820, 31-CA-23918 and 31-CB-10449. As a result of that proceeding, during which all parties participated with benefit of counsel, Administrative Law Judge Frederick Herzog determined that the contract alleged as a bar here was the product of unfair labor practices and thus does not act as a contract bar. On the basis of the Judge's decision, and in the exercise of my authority and discretion, I deny this motion.

With reference to the Motion to Vacate the Notice of Hearing, the Motion that the Petition be held in abeyance, and the Motion that the Petitioner's Request to Proceed and *Carlson Furniture* waiver be denied as premature, paragraphs (b), (c) and (d) above, respectively, I note that the Petitioner has filed a Request to Proceed and *Carlson Furniture* waiver. Based upon those documents and pursuant to my authority and discretion, I am prepared to proceed and issue this Decision and Direction of Election. Should a Request for Review of my Decision and Direction of Election be filed with the Board, the Board will then have before it both this R-case and the related C-case proceedings and thus will be able to expeditiously resolve both the question concerning representation and the alleged unfair labor practices. Thus, I deny the three above-noted motions.

As to the Motion to Transfer the Proceeding to the Board, paragraph (e) above, I reject the Employer and Intervenor's contention that I am seeking to make new law. I note that in the related Section 10(j) proceeding in this matter, Counsel for the General Counsel, on behalf of the Board, made certain representations to the District Court in seeking Section 10(j) relief. One of those representations was that by authorizing the Section

10(j) petition, the Board had also authorized the Region to proceed in the representation case upon the grant of appropriate Section 10(j) relief and to issue the appropriate certification based on the results of a valid election. Though the District Court declined to issue Section 10(j) relief, I am proceeding as authorized. Thus, I deny the Motion to Transfer the Proceeding to the Board.

4/ The Employer, Gulf Caribe Maritime, Inc., is a Washington state corporation, with its principal place of business in Mobile, Alabama and an office in Redondo Beach, California. Through its Redondo Beach, California office it has been engaged in the business of providing mooring launch services, passenger launch services, and line boat services at El Segundo, California moorings. During the past 12 months, the Employer purchased and received in the State of California, goods valued in excess of $50,000 directly from points outside the State of California, and during that same period of time had gross revenues in excess of $50,000. The Employer thus satisfies the statutory as well as the Board's discretionary standard for asserting jurisdiction. *Siemons Mailing Service*, 122 NLRB 81 (l959).

5/ Seafarers International Union, Atlantic, Gulf, Lakes and Inland Water District, affiliated with the Seafarers International Union of North America, AFL-CIO, was granted the status of an Intervenor only for purposes of this hearing on the basis of an alleged agreement between it and the Employer covering the Southern California facility employees. The grant of Intervenor status was granted despite the decision of Administrative Law Judge Herzog in Cases 31-CA-23820, 31-CA-23918 and 31-CB-10449, in which the judge concluded that the cards used to secure recognition for the Southern California employees from the Employer were tainted and thus the recognition invalid.

The parties have stipulated, and I find, that the Petitioner, Inlandboatmen's Union of the Pacific, Marine Division, AFL-CIO, affiliated with the International Longshore and Warehouse Union, AFL-CIO, and the Intervenor, Seafarers International Union, Atlantic, Gulf, Lakes and Inland Water District, affiliated with the Seafarers International Union of North America, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

6/ The Employer and the Intervenor contend that the Alabama contract and an addendum to their Alabama contract executed on behalf of the Southern California facility employees on approximately March 24, 1999, acts as a contract bar in this matter. Contrary to the Employer and Intervenor's contentions, I conclude that there is no contract bar here.

As set forth by Administrative Law Judge Herzog in his September 30, 1999 decision, the authorization cards secured by the Intervenor were tainted and thus any recognition granted to the Intervenor by the Employer on the basis of the cards is invalid. The judge concluded that the Employer should cease and desist giving force or effect to any agreement reached between it and the Intervenor regarding the Employer's Southern California facility employees and should withdraw and withhold recognition from the Intervenor until the Intervenor is validly designated and selected [the General Counsel argues in its Exceptions to the Board that the Intervenor should have to be certified rather than merely selected or designated] by an uncoerced majority of the Employer's Southern California facility employees. The judge also ordered the Intervenor to cease and desist from seeking or accepting recognition from the Employer as the Southern California facility employees' representative until the Intervenor is validly designated and selected [again, the General Counsel argues in its Exceptions that the Intervenor should have to be certified] by an uncoerced majority of the Employer's Southern California facility employees.

Thus, I find and conclude, on the basis of the judge's decision, that there is no valid contract in existence between the Employer and the Intervenor covering the Employer's Southern California facility employees and thus there is no contract bar in this matter.

7/ The Petitioner proposes as an appropriate unit one composed of boat operators and deckhands employed in the Employer's Southern California operations which excludes office clerical employees, guards and supervisors as defined in the Act.

The Employer's position is that there is no unit appropriate in this case as the entire proceeding should be dismissed. The Employer further contends the unit petitioned for by the Petitioner is inappropriate because the petition is inappropriate. Having stated that, the Employer contends that what it calls the "Board's long-standing presumption in favor

of fleet-wide units" should apply in this case and that the minimum appropriate unit is a fleet-wide unit covering all vessels owned or operated by Gulf Caribe Maritime, Inc. The Employer further contends that the addendum to the Employer's agreement with the Intervenor for its Alabama operation (what the Employer calls the "national agreement") "implicates" the employees named in the Petitioner's petition, that is, "non-supervisory marine employees providing offshore mooring services at El Segundo, California, including mooring/crew boat operators, deck hands and trainees and excluding supervisors, guards, confidential employees and all other employees".

The Intervenor's position is that the only appropriate unit is the one set forth in the Alabama collective bargaining agreement, Employer's Exhibit 1 at the hearing.

With reference to the appropriate unit, at the hearing, the Petitioner proposed the following stipulations to which all parties agreed:

a). The boat operators and deck hands employed in the Employer's Southern California operation are engaged exclusively in providing mooring, crew boat and launch services to tankard vessels operated by Chevron or other companies, which load and discharge petroleum products at the Chevron refinery in El Segundo, California.

They work under the day-to-day management and supervision of the Employer's Southern California manager, Matt Merrill, and the Employer's two Southern California crew chiefs, Ben Veach and Tom Frankfurter.

b). The other employees covered by the Employer's collective bargaining agreement with the SIU [the Intervenor], are based in Mobile, Alabama, and are engaged in various tug boat and barge operations in that area and in Puerto Rico. Their job duties are different in some respects, than those of the Southern California employees, they work under different day-to-day supervision than the Southern California employees, and they are paid at different wage rates.

c). There is no functional integration of the Employer's Southern California operations and its operations based in Mobile, Alabama.

d). There has been no temporary or permanent employee interchange between the Mobile operations and the Southern California operations, and there is no significant contact between the two groups of employees.

Additionally, Administrative Law Judge Herzog in his decision in cases 31-CA-23820, et al., notes the difference in the Southern California and Alabama operations in footnote 4 of his decision. In addition, he notes under Section III (B) of his decision, under Discussion, that all parties to the hearing, including the Intervenor and the Employer, who both had counsel at the C-case hearing:

> "recognize and concede that this case does not involve what is referred to as a traditional 'community of interest' accretion issue, i.e., one where factors such as integration of operations, centralization of administration and management control, geographic proximity, similarity of working conditions and skills, labor relations control, common or separate supervision, and bargaining history, are examined in order to determine whether it is appropriate to extend a union's representational rights at one location of an employer to employees at another location of the same employer. The theory is quite obviously inapplicable to this case, and could not be used to justify permitting the SIU [Intervenor] to represent the eight employees at Gulf Caribe's [Employer] Redondo Beach facility".

The judge also notes in footnote 11 of his decision that the unit in issue [the Employer's Southern California facility] "seems generally to consist of all non-supervisory employees engaged in the work of mooring and unmooring incoming ships at a single facility which has been engaged in that business for over 40 years. Thus, it is a presumptively appropriate unit for collective bargaining".

Initially I note the long-standing requirement that a petitioner must request only "an" appropriate unit, not the "most" appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *P.J. Dick Contracting*, 290 NLRB 150 (1988); *Omni International Hotel*, 283 NLRB 475 (1987). Additionally, I note that a major determinant in finding an appropriate unit is the community of interest and duties shared by the employees involved. Considerations such as degree of functional integration, common supervision, nature of employee skills and functions, interchangeablity and contact among employees, general working conditions, work situs, and fringe benefits are to be examined to determine if the employees involved share a sufficient community of interest to be found to be an appropriate unit. Based upon the stipulations reached by the parties evidencing a lack

of community of interest factors between the Alabama and Southern California facilities, and the findings of the judge, I conclude that the Alabama and Southern California facility Gulf Caribe employees lack a substantial community of interest and that the unit sought by the Petitioner limited to the Southern California facility is an appropriate unit.

There are approximately 8 employees in the bargaining unit.

8/ In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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